

Exhibit A

From: [Kaiser, Steven J.](#)
To: [Kevin Rayhill](#)
Cc: [Joseph Saveri](#); [Ronnie Spiegel](#); [David Seidel](#); [Dan Nordin](#); mmulqueen@bakerdonelson.com
Subject: RE: Charlesbank and Bain Privilege Logs
Date: Wednesday, May 4, 2022 6:44:52 PM

Mr. Rayhill:

Now that the matter is before the Court, Bain and Charlesbank will need to focus their resources to responding to Plaintiffs' motion.

Best regards,

Steven J. Kaiser

Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
T: +1 202 974 1554
skaiser@cgsh.com | clearygottlieb.com

From: Kevin Rayhill <krayhill@saverilawfirm.com>

Sent: Tuesday, May 3, 2022 4:08 PM

To: Kaiser, Steven J. <skaiser@cgsh.com>

Cc: Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>; David Seidel <dseidel@saverilawfirm.com>; Dan Nordin <dnordin@gustafsongluek.com>; mmulqueen@bakerdonelson.com

Subject: RE: Charlesbank and Bain Privilege Logs

Steve,

By our motion, we have sought intervention from the Court. We now have your suggestion that we "drop the waiver argument and work through any issues." Our motion, and the correspondence that predated it, enumerates many of the deficiencies. You have not responded to any of them. Given your prior statement that such efforts would be pointless, we don't know what you suggest. We reiterate our request that you produce all documents improperly withheld and provide a log adequately supporting any privilege claims. See Fed. R. Civ. P. 26(b)(5)(ii). As it stands now, you still have not met your burden to adequately assert privilege over the nearly 10,000 responsive documents you withheld or redacted under privilege claims, even after the close of discovery and as depositions of the document custodians and other witnesses continue. Defendants' failure to timely assert privilege has and continues to prejudice Plaintiffs. Your continued delay provides further support for the conclusion that any legitimate protection has been waived. *Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist.*, [408 F.3d 1142](#) (9th Cir. 2005).

Sincerely,

Kevin

From: Kaiser, Steven J. <skaiser@cgsh.com>
Sent: Monday, May 2, 2022 3:38 PM
To: Kevin Rayhill <krayhill@saverilawfirm.com>
Cc: Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>;
David Seidel <dseidel@saverilawfirm.com>; Dan Nordin <dnordin@gustafsongluek.com>;
mmulqueen@bakerdonelson.com
Subject: RE: Charlesbank and Bain Privilege Logs

Mr. Rayhill:

To state the obvious, if there was waiver, the content of the logs is irrelevant. If you persist on the waiver track, we cannot justify the cost and expense of responding to your letter, although, to be sure, we do not think their assertions that the contents of the log are insufficient under the Federal Rules has any merit, which we would explain further in such a response.

We think a more productive course would be to drop the waiver argument and work through any issues you think you have with the log. But it is up to you. If you want to discuss further, let us know. Thanks.

Steven J. Kaiser
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From: Kevin Rayhill <krayhill@saverilawfirm.com>
Sent: Monday, May 2, 2022 1:48 PM
To: Kaiser, Steven J. <skaiser@cgsh.com>
Cc: Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>;
David Seidel <dseidel@saverilawfirm.com>; Dan Nordin <dnordin@gustafsongluek.com>;
mmulqueen@bakerdonelson.com
Subject: RE: Charlesbank and Bain Privilege Logs

Steve,

Thank you for your response.

Plaintiffs maintain that Charlesbank and Bain's logs were so untimely that you have waived privilege. In addition, the untimely logs are wholly inadequate. Our April 26 letter noted numerous facial deficiencies with the logs that prevent us from assessing whether your assertion of privilege over thousands of documents is proper. The burden to establish the privilege for each document

withheld or redacted for privilege lies with Bain and Charlesbank. “[T]he standard for testing the adequacy of the privilege log is whether, as to each document, it sets forth facts that, if credited, would suffice to establish each element of the privilege or immunity that is claimed.” *Vaughan v. Celanese Americas Corp.*, 2006 WL 3592538, at *3 (W.D.N.C. Dec. 11, 2006). Bain and Charlesbank have failed to carry this burden.

Given the highly prejudicial nature of your untimely logs and the exigent circumstances with depositions underway, we must move for relief from the court without delay. However, Plaintiffs’ motion to the court on waiver should have no effect on Charlesbank and Bain’s ability or obligation to comply with Rule 26, to cure the deficiencies, and to produce a privilege log that “will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(ii). We have noted numerous facial deficiencies. Your response appears to concede that corrections are needed. We don’t see how they would be “pointless.” We invite you to make corrections immediately. Nothing in Plaintiffs’ forthcoming motion or correspondence to date waives, foregoes, or in any way excuses Defendants’ requirements under the Federal Rules.

Sincerely,

Kevin

Kevin E. Rayhill
Associate Attorney

JOSEPH SAVERI

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From: Kaiser, Steven J. <skaiser@cgsh.com>
Sent: Monday, May 2, 2022 7:17 AM
To: Kevin Rayhill <krayhill@saverilawfirm.com>
Cc: Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>; David Seidel <dseidel@saverilawfirm.com>; Dan Nordin <dnordin@gustafsongluek.com>; mmulqueen@bakerdonelson.com
Subject: RE: Charlesbank and Bain Privilege Logs

Mr. Rayhill:

We understand from your April 26 letter that the question you are asking is whether Bain and Charlesbank agree that their privileges have been waived and will agree to produce all of the documents on their privilege logs as result (or remove the redactions of privileged material on those documents, as the case may be).

You are correct that Charlesbank and Bain do not agree with your suggestion that there has been privilege waiver and do not agree with your production request. Charlesbank and Bain acted in good faith and with diligence in completing the logs, which as you know were voluminous given the scope of Plaintiffs' requests.

We find it hard to believe you are seriously pursuing a waiver argument under these circumstances, but, in any event, Charlesbank and Bain reserve all of their rights in the event Plaintiffs follow through on the threatened motion, including asking the Court for an award of costs for responding to it, and all other pertinent relief.

Likewise, assuming that is the direction Plaintiffs go, the logic of your argument will mean that a response to your questions about the logs would be pointless and we will proceed accordingly.

Best regards,

Steven J. Kaiser

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From: Kevin Rayhill <krayhill@saverilawfirm.com>

Sent: Saturday, April 30, 2022 4:26 PM

To: Kaiser, Steven J. <skaiser@cgsh.com>; mmulqueen@bakerdonelson.com

Cc: Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>;

David Seidel <dseidel@saverilawfirm.com>; Dan Nordin <dnordin@gustafsongluek.com>

Subject: RE: Charlesbank and Bain Privilege Logs

Dear Steve,

We have not heard back from you on the privilege log issue and believe the parties are at impasse. We plan to file a motion on Monday morning seeking an order that Charlesbank and Bain's privilege assertions are waived. For purposes of the certificate of consultation, please let us know if defendants oppose.

Kevin

From: Kevin Rayhill

Sent: Tuesday, April 26, 2022 7:32 PM

To: Kaiser, Steven J. <skaiser@cgsh.com>; mmulqueen@bakerdonelson.com

Cc: Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>;

David Seidel <dseidel@saverilawfirm.com>; Dan Nordin <dnordin@gustafsongluek.com>

Subject: RE: Charlesbank and Bain Privilege Logs

Steve,

Please see the attached correspondence.

Kevin

From: Kaiser, Steven J. <skaiser@cgsh.com>

Sent: Tuesday, April 19, 2022 7:24 PM

To: Kevin Rayhill <krayhill@saverilawfirm.com>; mmulqueen@bakerdonelson.com

Cc: Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>; David Seidel <dseidel@saverilawfirm.com>; Dan Nordin <dnordin@gustafsongluek.com>

Subject: RE: Charlesbank and Bain Privilege Logs

Kevin:

We disagree entirely with your assertion of waiver.

As we have told you and your former colleague, Plaintiffs' unreasonable insistence that the back and forth involving outside counsel relating to routine aspects of the purchase and sale of Varsity Brands be logged has hampered the finalization of the privilege logs. We tried to work with you and your former colleague to mitigate this issue, but were turned back at every turn, which was an unfortunate choice on Plaintiffs' part. This delayed the production and the provisioning of the privilege logs, as we told you it would.

In any event, attached is the Bain log. We will send the Charlesbank log as soon as it is finalized, which we expect in the next day or two.

Have a nice evening.

Steven J. Kaiser

Cleary Gottlieb Steen & Hamilton LLP
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skaiser@cgsh.com | clearygottlieb.com

From: Kevin Rayhill <krayhill@saverilawfirm.com>

Sent: Monday, April 18, 2022 9:19 PM

To: Kaiser, Steven J. <skaiser@cgsh.com>; mmulqueen@bakerdonelson.com

Cc: Joseph Saveri <jsaveri@saverilawfirm.com>; Ronnie Spiegel <rspiegel@saverilawfirm.com>; David Seidel <dseidel@saverilawfirm.com>; Dan Nordin <dnordin@gustafsongluek.com>

Subject: Charlesbank and Bain Privilege Logs

Dear Steve:

Plaintiffs have not received any log specifying Charlesbank or Bain documents withheld on privilege or work product grounds. Given the expiration of the deadline, in the absence of required logs, a claim of privilege would no longer be timely and such claim is waived. Further to the Court's orders regarding the production of documents in advance of depositions, and the order providing for the production of privilege logs in advance of the depositions, any custodial documents withheld on privilege grounds should be produced without delay.

Sincerely,

Kevin E. Rayhill
Associate Attorney

JOSEPH SAVERI

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